

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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PUBLIC EMPLOYMENT
RELATIONS BOARD

JANICE M. NEAL, et al.,)
Appellants,)
and)
STATE OF IOWA (DEPARTMENT OF)
HUMAN SERVICES and DEPARTMENT OF)
PERSONNEL),)
Appellee.)

CASE NO. 95-MA-08

RULING ON MOTION TO DISMISS

Charles E. Boldt, Administrative Law Judge. On January 17, 1995, a "State Employee Grievance and Disciplinary Action Appeal" form was filed on behalf of eight employees¹ (Appellants) of the State of Iowa (State). The appeal was filed pursuant to Section 19A.14(1), Code of Iowa (1993)² with the Public Employment Relations Board (PERB or Board) against the State of Iowa [Department of Human Services (DHS) and the Department of Personnel (IDOP)]. The appeal is from a third step grievance response to this group grievance issued December 20, 1994 by a representative of the Director of IDOP. The appeal alleged violation by the State of Section 19A.9(1) of the Code.

¹The appellants are: Janice Neal, Betty Bannewitz, Marian Gudenkauf, Debra Brandt, Vicki Pilcher, Pam Ratchford, Margaret Czuba, and Sandra Thompson. All are in the job classification of Nurse Supervisor I at the Mental Health Institute (MHI) at Independence.

²All references to the Code will be to the Code of Iowa (1993) unless otherwise specified.

On February 8, 1995, the State filed a Motion to Dismiss. The State's motion sought dismissal by PERB for lack of subject matter jurisdiction in this matter.

Oral arguments regarding the motion were heard before me on September 18, 1995. At hearing, the Appellants were represented by Scott Neal and the Appellee was represented by Lee Wilkinson.

The State asserted that the appeal is related to a classification issue. As such, the matter is under the jurisdiction of the Personnel Commission. The State cited Gary Allen and Allen Teepe, 528 N.W.2nd 583 (Iowa 1995) in support of the contention that PERB lacks subject matter jurisdiction over classification issues.

In the alternative, the State argues, if the claim in the appeal is one of disparity of pay between similar job classifications, it is a comparable worth issue. Comparable worth for state employees is addressed in Section 70A.18 of the Code. As such, the issue is not within PERB's jurisdiction since it does not allege lack of substantial compliance with Chapter 19A of the Code or under IDOP rules as required under Section 19A.14(1).

In the Appellants' resistance to the State's motion, the Appellants identified the issue as ". . . contesting an inequitable pay and responsibility relationship which exists between Nurse Supervisor I's and Nurse Clinicians." In support of its resistance, Appellants argued that the State has failed in its duty to prepare and maintain a personnel classification and pay plan under Section 19A.9(1) of the Code.

In addition, the Appellants argued that IDOP directed appeal of the IDOP Step 3 response to PERB. The Appellants contended that since the appeal was directed to PERB, it must then follow that PERB has jurisdiction over the matter.

Section 19A.9(1) generally provides that IDOP generate rules for ". . . preparation, maintenance, and revision of a position classification plan . . . based upon duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class" (Emphasis added). Section 19A.9 also requires ". . . due regard to terms of collective bargaining agreements."

The issue in this case is not a classification issue. The Nurse Supervisor I's are not seeking reclassification to the classification of Nurse Clinician. As a pay issue, the grievance underlying the appeal addressed the perceived comparability of duties and responsibilities between the Nurse Clinician and Nurse Supervisor I classifications. Thus, the issue is a comparable worth issue.

The Appellants have not argued that the State has failed to adopt rules and classification and pay plans under Section 19A.9(1). Nor have the Appellants argued that there is disparity of pay under IDOP's pay plans within a job classification. The issue raised by the Appellants is of disparate pay between two separate job classifications. This issue is not incorporated under

Section 19A.9(1) of the Code except through reallocation of positions which the Appellants do not seek.

The question of referral of appeal of a Step 3 response to PERB is addressed in IDOP Rule 12.1(1)(c), 581 Ia. Admin. Code which requires such inclusion in all Step 3 responses. IDOP does not confer jurisdiction on PERB by this inclusion.

Having concluded that the issue in this instant case is not within the purview of Section 19A.9(1) of the Code; but, more appropriately a comparable worth issue under Section 70A.18 of the Code, I further conclude that PERB is without subject matter jurisdiction in this matter. Accordingly, I issue the following:

ORDER

IT IS HEREBY ORDERED that the Motion to Dismiss the appeal of Janice M. Neal, et al. is hereby granted.

DATED at Des Moines, Iowa this 26th day of September, 1995.

Charles E. Boldt
Charles E. Boldt
Administrative Law Judge